

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ENDI MUNOZ-CHAVEZ,

Applicant,

v.

Civ. 15-281 KG/GBW
Cr. 14-660 KG

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

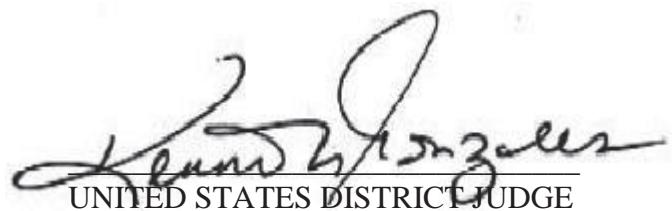
This matter comes before the Court on Applicant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody. *Doc. 1.* Applicant argues that he suffered ineffective assistance of counsel because counsel failed to (1) file a timely notice of appeal despite instructions as directed by Applicant; (2) object to the 16 offense level enhancement; and (3) induced Applicant to plead guilty with a promise of a sentence of no more than 16 months. *Id* at 4-5.

The Magistrate Judge filed his Proposed Findings and Recommended Disposition (PFRD) on July 22, 2015. *Doc. 10.* He recommended dismissing the first and second claims because Applicant knowingly and voluntarily entered into a plea agreement in which he waived his right to collaterally attack counsel's alleged failure to file a notice of appeal and deficient performance at sentencing. *Doc. 10* at 5-7. For the third and final claim, the Magistrate Judge found that Applicant's allegation that counsel induced him to plead guilty by promising a maximum sentence of 16 months, *doc. 1* at 5, was undermined by the record. *Doc. 10* at 7-10. The Magistrate Judge explained that Applicant's self-serving allegations were insufficient to overcome "the explicit terms of the plea agreement and the extensive plea colloquy," which

made it “clear that Petitioner, prior to entering his plea, understood he had no guarantee of any particular sentence – let alone a sixteen-month sentence.” *Id.* at 10 (citing *United States v. Estrada*, 849 F.3d 1304, 1306 (10th Cir. 1988) (“A defendant’s statements at a plea hearing should be regarded as conclusive . . . in the absence of a believable, valid reason justifying departure from the apparent truth of those statements.”)).

Applicant has filed no objections to the PFRD, and, upon review of the record, I concur with the Magistrate Judge’s findings and recommendations.

Wherefore, IT IS HEREBY ORDERED that the Magistrate Judge’s Proposed Findings and Recommended Disposition, *doc. 10*, is ADOPTED. Applicant’s claims regarding counsel’s failures are DISMISSED with prejudice.



UNITED STATES DISTRICT JUDGE